

FILED
U.S. DISTRICT COURT
NORTHERN DIST. OF TX
FT. WORTH DIVISION

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CLERK OF COURT

Defendants

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Civil Action Number: _____

Jury Demanded

Bobby Pearson (“**Pearson**”), Frank Spacek (“**Spacek**”), Stefan Marunde (“**Marunde**”), Ky Teumboun (“**Teumboun**”), Brennan **Andrades** (“Andrades”), Stephan Whitson (“**Whitson**”), Michael Govantes (“**Govantes**”), Tri Nguyen (“**Nguyen**”), Paul Kincade (“**Kincade**”) and Craig Richards (“**Richards**”) (Pearson, Spacek, Maqunde, Teumbaun, Andrades, Whitson, Govantes, Nguyen, Kincade and Richards individually referred to as a “**Plaintiff**” and collectively referred to as “**Plaintiffs**”) individually and on behalf of all others similarly situated (“**Class Members**”) bring this Fair Labor Standards Act (“FLSA”) suit against the above-named Defendants and show as follows:

A. Nature of Suit.

1. The FLSA was passed by Congress in 1938 in an attempt to eliminate low wages and long hours and to correct conditions that were detrimental to the health and well-being of workers. To achieve its humanitarian goals, the FLSA requires the payment of a minimum wage and “limits to 40 a week the number of hours that an employer may employ any of his employees subject to the Act, unless the employee receives compensation for his employment in excess of 40 hours at a rate not less than one and one-half times the regular rate at which he is employed.” *Walling v. Helmerich & Payne*, 323 U.S. 37, 40 (1944) (discussing the requirements of 29 U.S.C. § 207 (a)).
2. This is the classic example of an employer intentionally violating the FLSA. Defendants paid absolutely no overtime to any of its employees regardless of job classification or duties. While the employer paid a “shift premium” for work performed on Saturday, the time and a half premium was not connected to whether the employee had worked 40 hours previously. It was simply paid because it was work performed on a Saturday.
3. This lawsuit seeks recovery of the unpaid overtime for the numerous employees employed by Defendants. Although the total number of employees of Defendants is not numerous (approximately 50-60) compared to some other collective actions, Plaintiffs seek the Court’s assistance in creating appropriate subclasses of employees to properly and efficiently calculate the overtime wages due to the Plaintiffs and Class Members.

B. Parties.

4. Each Plaintiff is an individual residing in the Northern District of Texas. In the three-year period preceding the filing of this action, Plaintiffs were employed by Defendants within the meaning of the Fair Labor Standards Act, 29 U.S.C. § 201 et. seq. At all times hereinafter mentioned, each Plaintiff was an individual employee who was engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. §§ 206-207. The written consent to become a party plaintiff for each Plaintiff is attached hereto as Exhibit "A."
5. The putative Class Members are individuals that were employed by Defendants in the three-year period preceding the filing of this action and were not paid overtime in compliance with the FLSA. At all times hereinafter mentioned, the Class Members were individual employees who were engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. §§ 206-207.
6. Defendant Trinity Armored Security, Inc. ("**Defendant Trinity**") is a Texas corporation engaged in commerce or the production of goods for commerce within the meaning of the FLSA and is obligated to ensure that all employees are paid in accordance with the FLSA. Defendant Trinity's office address is 4221 Clay Avenue, Haltom City, TX 76117. Defendant Trinity may be served by serving its registered agent Kenneth A. West at 4221 Clay Avenue, Haltom City, TX 76117, or wherever its registered agent may be found.

7. Defendant Kenneth A. West ("**Defendant West**") is an individual and a Texas resident residing in the Northern District of Texas. Defendant West can be served at 4221 Clay Avenue, Haltom City, TX 76117 or wherever he can be found.

C. Jurisdiction and Venue.

8. Venue of this action is proper in this district and division because the majority of the events giving rise to the cause of action alleged herein occurred in this division and judicial district. Venue exists in the judicial district pursuant to 28 U.S.C. § 1391.
9. Defendants carry on substantial business in the Northern District of Texas and have sufficient minimum contacts with this state to be subject to this Court's jurisdiction.
10. This Court has jurisdiction over this case pursuant to the District Court's federal question jurisdiction as set forth in 28 U.S.C. § 1331. Specifically, this case is brought pursuant to the FLSA, 29 U.S.C. § 201 *et seq.*, as amended.

D. Coverage.

11. At all material times, Defendants have acted, directly or indirectly, in the interest of an employer with respect to Plaintiffs and the Class Members.
12. At all times hereinafter mentioned, Defendants have been an employer within the meaning of the Section 3(d) of the FLSA, 29 U.S.C. § 203(d).
13. At all times hereinafter mentioned, Defendants have been an enterprise within the meaning of Section 3(r) of the FLSA, 29 U.S.C. § 203(r).

14. At all times hereinafter mentioned, Defendants have been an enterprise engaged in commerce in the production of goods for commerce within the meaning of Section 3(s)(1) of the FLSA, 29 U.S.C. § 203(s)(1), in that said enterprise has had employees engaging in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce for any person and in that said enterprise has had and has an annual gross volume of sales made or business done of not less than \$500,000 (exclusive of excise taxes at the retail level which are separately stated).

15. Defendant West had and has authority to set corporate policy, participate in decisions regarding the classification of employees and the payment of overtime as well as participate in decisions regarding whether or not to pay Plaintiffs overtime. In addition, Defendant West had and has operational control of significant aspects of the Defendant Trinity's day-to-day functions and independently exercised control over the work situation. He had and has direct involvement in the day-to-day operation of Defendant Trinity and had and has some direct responsibility for the supervision of the employees.

16. Defendant West acts, and has acted, directly or indirectly, in the interests of an employer in relation to Plaintiffs and the Class Members.

17. At all times hereinafter mentioned, Plaintiffs were individual employees who were engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. §§ 206-207.

18. Plaintiffs were employed by Defendants within the applicable statute of limitations.

E. Factual Allegations Common to all Plaintiffs.

19. Defendant Trinity provides personalized armored car, ATM, coin sorting and wrapping, and other related services to financial institutions, retail businesses, educational entities and municipalities. It also provides services for events with special scheduling needs such as sports activities and festivals. According to its website Defendant Trinity provides these services throughout the North Central Texas region.
20. Plaintiffs are paid on an hourly basis. If they work more than 40 hours per workweek they are normally paid only “straight time” for all hours worked over 40; Plaintiffs are not paid time and one half.
21. Defendant West is the owner of Defendant Trinity and has complete say and control over Defendant Trinity’s operations and compensation policies and practices.
22. Defendant Trinity has four locations in the North Central Texas region; Dallas, Plano, Haltom City and Wichita Falls, Texas (each a “**Location**” and collectively the “**Locations**”). The Dallas, Plano and Wichita Falls Locations have no vehicles weighing over 10,000 pounds. The Haltom City Location has eleven vehicles weighing less than 10,000 pounds and seven vehicles weighing more than 10,000 pounds.
23. None of the Plaintiffs or employees of Defendants operate vehicles that are (1) designed or used to transport more than 8 passengers (including the driver) for

compensation; (ii) designed or used to transport more than 15 passengers (including the driver) and not used to transport passengers for compensation; or (iii) used in transporting hazardous material, requiring placarding under regulations prescribed by the Secretary of Transportation.

F. Factual Allegations for Operations Manager

24. Pearson works for Defendants at their Haltom City facility as an "Operations Manager." Pearson is responsible for scheduling the services required by customers and the routes driven by Defendants' drivers. Additionally, Pearson oversees the maintenance of the fleet of trucks driven by employees of Defendants.
25. During the time period, Pearson's job responsibilities consisted of providing scheduling and in-take services to clients of Defendants.
26. Pearson's primary job duties consisted of conduct that does not require discretion in order to be performed or advanced training. Pearson's duties are routine and do not require the exercise of independent judgment or discretion. Although Pearson is labeled as a "Manager" his primary duty is not the management of the enterprise or of a customarily recognized department or subdivision; to the contrary, he has no responsibility for:
- a. Interviewing, selecting, and training employees;
 - b. Setting and adjusting pay and work hours;
 - c. Maintaining production or sales records;

- d. Hiring or firing employees;
 - e. Appraising employee productivity and efficiency;
 - f. Handling employee complaints and grievances;
 - g. Disciplining employees;
 - h. Planning and controlling the budget; or
 - i. Monitoring or implementing legal compliance measures
27. Pearson and similarly situated Operations Managers regularly worked in excess of 40 hours a week.
28. Defendants did not pay Pearson, and similarly situated employees, time-and-one-half their regular rate of pay for the hours that Pearson and similarly situated employees worked over 40 hours a week.
29. Pearson, and other similarly situated employees, were “on-call” during many of the workweeks and not paid at the overtime rate for the time spent on-call.
30. Defendants knowingly, willfully, and/or with reckless disregard carried out its illegal pattern and/or practice of failing to pay overtime compensation with respect to Pearson and similarly situated employees.
31. The FLSA requires employers to keep accurate time records of hours worked by nonexempt employees. 29 U.S.C. § 211 (c).
32. In addition to the pay violations of the FLSA identified above, Defendants also failed to keep proper time records as required by the FLSA.
33. Pearson has retained the Law Office of Chris R. Miltenberger, PLLC to represent him in this litigation and has agreed to pay a reasonable fee for its services.

G. Factual Allegations for Vault Employees.

34. Spacek, Kincade and Govantes (each a “**Vault Employee**” and collectively the “**Vault Employees**”) work for Defendants as “vault” employees. Their duties consist of accounting for the money in the vault, checking the money out of the vault and checking the money into the vault.
35. The Vault Employees do not qualify for any of the “exemptions” to the FLSA. Their duties do not involve independent discretion.
36. The Vault Employees do not perform duties as a driver, driver’s helper, loader or mechanic on any vehicles.
37. The Vault Employees are paid on an hourly basis but are not paid overtime by Defendants.
38. The Vault Employees and similarly situated employees regularly work in excess of 40 hours a week.
39. Defendants did not pay the Vault Employees and similarly situated employees, time-and-one-half their regular rate of pay for the hours that the Vault Employees and similarly situated employees worked over 40 hours a week.
40. Defendants knowingly, willfully, and/or with reckless disregard carried out its illegal pattern and/or practice of failing to pay overtime compensation with respect to the Vault Employees and similarly situated employees.
41. In addition to the pay violations of the FLSA identified above, Defendants also failed to keep proper time records as required by the FLSA.

42. In addition to the pay violations of the FLSA identified above, Defendants also failed to keep proper time records as required by the FLSA.

43. The Vault Employees have retained the Law Office of Chris R. Miltenberger, PLLC to represent them in this litigation and has agreed to pay a reasonable fee for its services.

H. Factual Allegations for Delivery Truck Drivers.

44. Marunde, Teumboun, Andrades, Whitson, Nguyen, Kincade and Richards (each a “**Driver**” and collectively the “**Drivers**”) work for Defendants as delivery truck drivers. Drivers that are assigned to “school routes” are operating non-commercial vehicles (vehicle weighing 10,000 pounds or less) (“**School Route Drivers**”).

Drivers that are assigned to “armored truck” routes are operating commercial vehicles (vehicle weighing greater than 10,000 pounds) (“**Armored Truck Route Drivers**”).

45. Regardless of the type of vehicle operated by the Drivers, Defendants do not pay at the overtime rate for hours greater than 40 during a workweek. Defendants apparently rely on the overtime pay exemption of 13(b)(1) of the FLSA commonly known as the “motor carrier exemption.” Defendants’ reliance, however, is misplaced.

46. During the workweeks during which the Drivers “in whole or in part” perform work “affecting the safety of small vehicles” (non-commercial vehicle weighing 10,000 pounds or less), the overtime pay exemption of section 13(b)(1) of the FLSA does not apply to the Drivers. See, the U. S. Department of Labor Wage

and Hour Division, Field Assistance Bulletin No. 2010-2 attached hereto as Exhibit "B."

47. The Field Assistance Bulletin specifically provides in part as follows:

This memorandum clarifies the effect of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users Technical Corrections Act of 2008 (TCA), P.L. 110-244, on section 13(b)(1) of the Fair Labor Standards Act (FLSA). **Effective June 6, 2008, the overtime pay exemption under section 13(b)(1) does not apply to a driver, driver's helper, loader, or mechanic in any workweek in which their work affects the safe, interstate operation of certain motor vehicles weighing 10,000 pounds or less (hereinafter referred to as "small vehicles").**

...

TCA section 306(a) extends FLSA section 7 overtime requirements to employees covered by TCA section 306(c), notwithstanding FLSA section 13(b)(1). This means the overtime pay requirements apply to an employee of a motor carrier or motor private carrier in any workweek in which the employee works, "*in whole or in part*", as a driver, driver's helper, loader or mechanic affecting the safety of operation of small vehicles on public highways in interstate or foreign commerce. (emphasis added).

48. Thus, Drivers normally assigned to school routes during a workweek are entitled to overtime. Drivers normally assigned to armored truck routes may be entitled to overtime during a particular workweek depending on whether the Driver also worked "in whole or in part" on non-commercial vehicles during that workweek because such activity negates the exemption.

49. The Drivers are paid on an hourly basis but are not paid overtime by Defendants.

50. None of the Drivers have a commercial driver license.

51. The Drivers and similarly situated employees regularly work in excess of 40 hours a week.

52. Defendants did not pay the Drivers, and similarly situated employees, time-and-one-half their regular rate of pay for the hours that the Drivers and similarly situated employees worked over 40 hours a week.
53. Defendants knowingly, willfully, and/or with reckless disregard carried out its illegal pattern and/or practice of failing to pay overtime compensation with respect to the Drivers and similarly situated employees.
54. In addition to the pay violations of the FLSA identified above, Defendants also failed to keep proper time records as required by the FLSA.
55. The Drivers have retained the Law Office of Chris R. Miltenberger, PLLC to represent them in this litigation and has agreed to pay a reasonable fee for its services.

I. Collective Action Allegations.

56. Other employees have been victimized by this pattern, practice, and policy which is in willful violation of the FLSA. Some of these employees have worked with Plaintiffs and have reported that they were paid in the same manner as Plaintiffs, i.e., no overtime pay for hours worked in excess of 40 per workweek. Thus, from discussion with these employees, Plaintiffs are aware that the illegal practices or policies of Defendants have been uniformly imposed on the Class Members at each of the Locations.
57. The Class Members performed job duties typically associated with non-exempt employees. Their duties were routine and did not require the exercise of independent judgment or discretion. Moreover, these employees regularly worked

more than 40 hours in a workweek and were not paid one-half their regular rate of pay for hours worked in excess of 40 hours in a work week.

58. Accordingly, the employees victimized by Defendants' unlawful pattern and practices are similarly situated to, Plaintiffs in terms of job duties and pay provisions.

59. Defendants' failure to pay overtime compensation at the rates required by the FLSA is based on Defendants' generally applicable policies or practices and does not depend on the personal circumstances of the Class Members. Thus, Plaintiffs' experiences are typical of the experience of the Class Members.

60. The specific job titles, precise job requirements or job locations of the various Class Members do not prevent collective treatment. All Class Members, regardless of their work location, precise job requirements or rates of pay, are entitled to be paid the minimum wage and/or overtime compensation for hours worked in excess of 40 hours per week. Although the issue of damages may be individual in character, there is no detracting from the common nucleus of liability facts. The questions of law and fact are common to Plaintiffs and the Class Members.

61. The same policies and practices of failing to pay the overtime compensation as required by the FLSA are applied at each of the Locations which Defendants operate and this lawsuit seeks recovery for similarly situated employees at each of those Locations.

62. The class of similarly situated Plaintiffs is properly defined by four subclasses as follows:

- a. All Operations Managers who worked for Defendants at any of Defendants' Locations within the last three years who worked in excess of 40 hours in one or more workweeks and were not compensated at one and one-half times their regular rate of pay for all hours worked in excess of 40 hours in one or more workweeks;
- b. All Vault Employees who worked for Defendants at any of Defendants' Locations within the last three years who worked in excess of 40 hours in one or more workweeks and were not compensated at one and one-half times their regular rate of pay for all hours worked in excess of 40 hours in one or more workweeks; and
- c. All School Route Drivers who worked for Defendants at any of Defendants' Locations within the last three years who worked in excess of 40 hours in one or more workweeks and were not compensated at one and one-half times their regular rate of pay for all hours worked in excess of 40 hours in one or more workweeks.
- d. All Armored Truck Route Drivers who worked for Defendants at any of Defendants' Locations within the last three years who worked in excess of 40 hours in one or more workweeks and were not compensated at one and one-half times their regular rate of pay for all hours worked in excess of 40 hours in one or more workweeks.

63. Plaintiffs bring this action on behalf of similarly situated employees employed at any of the Locations.

64. As a collective action, Plaintiffs seek this Court's appointment and/or designation as representative of a group of similarly situated individuals as defined herein.

**J. Cause of Action: Failure to Pay Wages in Accordance
with the Fair Labor Standards Act.**

65. Each and every allegation contained in the foregoing paragraphs is re-alleged as if fully rewritten herein.

66. During the relevant period, Defendants have violated and are violating the provisions of Sections 6 and/or 7 of the FLSA, 29 U.S.C. §§ 206, 207, and 215(a)(2), by employing employees in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of the FLSA as aforesaid, without compensating such employees for their work at the minimum wage and for their work in excess of forty hours per week at rates no less than one-and-a-half times the regular rates for which they were employed.
67. Defendants knowingly, willfully, or with reckless disregard carried out their illegal pattern or practice of failing to pay the minimum wage and/or overtime compensation with respect to Pearson and the Class Members.
68. Defendants did not act in good faith and/or have reasonable grounds for a belief that their actions did not violate the FLSA nor did they act in reliance upon any of the following in formulating their pay practices: (a) case law; (b) the FLSA, 29 U.S.C. § 201, et seq.; (c) Department of Labor Wage & Hour Opinion Letters; or (d) the Code of Federal Regulations.

K. Jury Demand.

69. Plaintiffs demand a trial by jury herein.

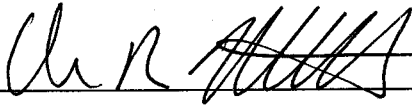
L. Relief Sought.

70. WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that they and all those who consent to be opt-in plaintiffs in this collective action recover jointly and severally from Defendants, the following:

- a. An Order recognizing this proceeding as a collective action pursuant to Section 216(b) of the FLSA and appointing Plaintiffs and their counsel to represent the Class Members;
- b. An Order requiring Defendants to provide the names, addresses, email addresses and telephone numbers of all potential Class Members;
- c. An Order approving the form and content of a notice to be sent to all potential Class Members advising them of the pendency of this litigation and of their rights with respect thereto;
- d. Compensation for all hours worked at a rate not less than the applicable minimum wage;
- e. Overtime compensation for all unpaid hours worked in excess of forty hours in any workweek at the rate of one-and-one-half times their regular rates;
- f. All unpaid wages and overtime compensation;
- g. An award of liquidated and/or punitive damages pursuant to 29 U.S.C § 216;
- h. Reasonable attorney's fees, expert fees, costs, and expenses of this action as provided by the FLSA;
- i. Pre-judgment and post-judgment interest at the highest rates allowed by law; and
- j. Such other relief as to which Plaintiffs may be entitled.

Dated this 8th day of April, 2013.

Respectfully submitted,



By: Chris R. Miltenberger
The Law Office of Chris R. Miltenberger, PLLC
Texas Bar Number: 14171200
430 N. Carroll, Suite 120
Southlake, Texas 76092
(817) 296-0422
(817) 446-5062 (fax)
chris@crmlawpractice.com

Attorney for Plaintiffs

EXHIBIT “A” TO COMPLAINT

Consent to be Party Plaintiff for the following:

- Bobby Pearson,
- Frank Spacek,
- Stefan Marunde,
- Ky Teumboun,
- Brennan Andrades,
- Stephan Whitson,
- Michael Govantes,
- Tri Nguyen,
- Paul Kincade, and
- Craig Richards

NOTICE OF CONSENT

I, Bobby G Pearson, consent to become a party plaintiff in a lawsuit seeking damages for unpaid wages under the Fair Labor Standards Act from Trinity Armored Services, Inc. and Kenneth A. West and any other entities or individuals who are determined to be employers under the Fair Labor Standards Act.

I agree to be represented by Chris R Miltenberger of the Law Office of Chris R. Miltenberger, PLLC.

Date: 4-4-13

Signature: _____

Printed Name: _____



Bobby G Pearson

Consent to be Party Plaintiff

NOTICE OF CONSENT

I, FRANK SPACEK, consent to become a party plaintiff in a lawsuit seeking damages for unpaid wages under the Fair Labor Standards Act from Trinity Armored Services, Inc. and Kenneth A. West and any other entities or individuals who are determined to be employers under the Fair Labor Standards Act.

I agree to be represented by Chris R Miltenberger of the Law Office of Chris R. Miltenberger, PLLC.

Date: 4-4-13

Signature: Frank Spacek

Printed Name: FRANK SPACEK

Consent to be Party Plaintiff

NOTICE OF CONSENT

I, Stefan Marunde, consent to become a party plaintiff in a lawsuit seeking damages for unpaid wages under the Fair Labor Standards Act from Trinity Armored Services, Inc. and Kenneth A. West and any other entities or individuals who are determined to be employers under the Fair Labor Standards Act.

I agree to be represented by Chris R Miltenberger of the Law Office of Chris R. Miltenberger, PLLC.

Date: 4-5-13

Signature: Stefan Marunde

Printed Name: STEFAN MARUNDE

Consent to be Party Plaintiff

NOTICE OF CONSENT

I, Ky Teumbaur, consent to become a party plaintiff in a lawsuit seeking damages for unpaid wages under the Fair Labor Standards Act from Trinity Armored Services, Inc. and Kenneth A. West and any other entities or individuals who are determined to be employers under the Fair Labor Standards Act.

I agree to be represented by Chris R Miltenberger of the Law Office of Chris R. Miltenberger, PLLC.

Date:

04/06/13

Signature:



Printed Name:

Ky Teumbaur

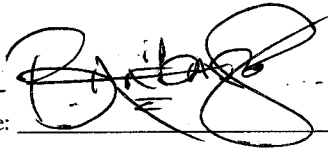
Consent to be Party Plaintiff

NOTICE OF CONSENT

I, BRENKIAN ANWAR, consent to become a party plaintiff in a lawsuit seeking damages for unpaid wages under the Fair Labor Standards Act from Trinity Armored Services, Inc. and Kenneth A. West and any other entities or individuals who are determined to be employers under the Fair Labor Standards Act.

I agree to be represented by Chris R Miltenberger of the Law Office of Chris R. Miltenberger, PLLC.

Date: 4/6/13

Signature: 

Printed Name: BRENKIAN ANWAR

Consent to be Party Plaintiff

NOTICE OF CONSENT

I, Stephen Whitson, consent to become a party plaintiff in a lawsuit seeking damages for unpaid wages under the Fair Labor Standards Act from Trinity Armored Services, Inc. and Kenneth A. West and any other entities or individuals who are determined to be employers under the Fair Labor Standards Act.

I agree to be represented by Chris R Miltenberger of the Law Office of Chris R. Miltenberger, PLLC.

Date: 04/05/13

Signature: 

Printed Name: Stephen Whitson

Consent to be Party Plaintiff

NOTICE OF CONSENT

I, MICHAEL GOVANTES, consent to become a party plaintiff in a lawsuit seeking damages for unpaid wages under the Fair Labor Standards Act from Trinity Armored Services, Inc. and Kenneth A. West and any other entities or individuals who are determined to be employers under the Fair Labor Standards Act.

I agree to be represented by Chris R Miltenberger of the Law Office of Chris R. Miltenberger, PLLC.

Date: 05 Apr 2013

Signature: 

Printed Name: MICHAEL GOVANTES

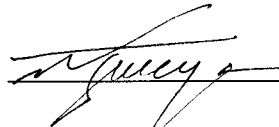
Consent to be Party Plaintiff

NOTICE OF CONSENT

I, TRI NGUYEN, consent to become a party plaintiff in a lawsuit seeking damages for unpaid wages under the Fair Labor Standards Act from Trinity Armored Services, Inc. and Kenneth A. West and any other entities or individuals who are determined to be employers under the Fair Labor Standards Act.

I agree to be represented by Chris R Miltenberger of the Law Office of Chris R. Miltenberger, PLLC.

Date: 4-5-1

Signature: 

Printed Name: TRI NGUYEN

Consent to be Party Plaintiff

NOTICE OF CONSENT

I, Paul Kincade, consent to become a party plaintiff in a lawsuit seeking damages for unpaid wages under the Fair Labor Standards Act from Trinity Armored Services, Inc. and Kenneth A. West and any other entities or individuals who are determined to be employers under the Fair Labor Standards Act.

I agree to be represented by Chris R Miltenberger of the Law Office of Chris R. Miltenberger, PLLC.

Date: 4-4-13

Signature: Paul Kincade

Printed Name: Paul Kincade

Consent to be Party Plaintiff

NOTICE OF CONSENT

I, CRAIG RICHARDS, consent to become a party plaintiff in a lawsuit seeking damages for unpaid wages under the Fair Labor Standards Act from Trinity Armored Services, Inc. and Kenneth A. West and any other entities or individuals who are determined to be employers under the Fair Labor Standards Act.

I agree to be represented by Chris R Miltenberger of the Law Office of Chris R. Miltenberger, PLLC.

Date: 4-4-13

Signature: Craig Richards

Printed Name: CRAIG RICHARDS

Consent to be Party Plaintiff

EXHIBIT "B" TO COMPLAINT

U. S. Department of Labor Wage and Hour Division,
Field Assistance Bulletin No. 2010-2



U.S. Department of Labor
Wage and Hour Division
Washington, D.C. 20210



November 4, 2010

FIELD ASSISTANCE BULLETIN No. 2010-2

MEMORANDUM FOR: REGIONAL ADMINISTRATORS AND DISTRICT DIRECTORS

FROM: NANCY J. LEPPINK *Jenna Bengtson for*
Deputy Administrator

SUBJECT: Change in Application of the FLSA § 13(b)(1) "Motor Carrier Exemption"

This memorandum clarifies the effect of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users Technical Corrections Act of 2008 (TCA), P.L. 110-244, on section 13(b)(1) of the Fair Labor Standards Act (FLSA). Effective June 6, 2008, the overtime pay exemption under section 13(b)(1) does not apply to a driver, driver's helper, loader, or mechanic in any workweek in which their work affects the safe, interstate operation of certain motor vehicles weighing 10,000 pounds or less (hereinafter referred to as "small vehicles").

Section 306 of the TCA (attached) amends the change in the section 13(b)(1) exemption made by the Safe Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users (SAFETEA-LU), P.L. 109-59 (see Field Assistance Bulletin 2007-2, May 23, 2007). This memorandum describes the TCA modification and its effect on the "four-month" rule.*

TCA section 306(a) extends FLSA section 7 overtime requirements to employees covered by TCA section 306(c), notwithstanding FLSA section 13(b)(1). This means the overtime pay requirements apply to an employee of a motor carrier or motor private carrier in any workweek in which the employee works, "in whole or in part", as a driver, driver's helper, loader or mechanic affecting the safety of operation of small vehicles on public highways in interstate or foreign commerce. This exception, however, does not apply to vehicles that are:

- (i) Designed or used to transport more than 8 passengers (including the driver) for compensation;

* The "four-month" rule stems from the Department of Transportation's Federal Motor Carrier Safety Administration's interpretation of the Motor Carrier Act of 1935, conferring that agency jurisdiction over drivers and certain other employees for a four-month period beginning with the date they could have been called upon to, or actually did, engage in the carrier's interstate activities; thus, triggering the overtime pay exemption for that period.

- (ii) Designed or used to transport more than 15 passengers (including the driver) and not used to transport passengers for compensation; or
- (iii) Used in transporting hazardous material, requiring placarding under regulations prescribed by the Secretary of Transportation.

Prior to TCA's enactment, drivers, driver's helpers, loaders or mechanics who performed safety-affecting duties on commercial motor vehicles under SAFETEA-LU were exempt under § 13(b)(1) for four months from the time they actually engaged in the carrier's interstate activities, or from the time they could have been called upon to engage in the carrier's interstate activities. TCA overrides the application of the "four-month" rule in any workweek an employee is covered by section 306(c).

For example, employees who performed, or could have been called upon to perform, duties affecting the safe operation of a motor vehicle in interstate commerce in any workweek are exempt from FLSA overtime requirements for the next four months, except for workweeks in that period in which their duties, in whole or in part, affect the safe operation of a small vehicle in interstate commerce. The phrase "in whole or in part" included in the statute means an employee who performs such duties involving small vehicles for the entire week or part of the week must receive overtime pay for hours worked over 40 in that workweek. The changes made by TCA thus extend FLSA overtime protection to some employees even when such employees are also subject to the authority of the Secretary of Transportation to set maximum hours of service. Please see attached chart for further clarification on how the TCA affects the application of the 13(b)(1) exemption.

For enforcement purposes, we will use the following standards:

- "Weighing 10,000 pounds" – WHD will continue to use the gross vehicle weight rating (GVWR) or gross combined vehicle weight rating in the event that the vehicle is pulling a trailer. The GVWR is found on the vehicle, usually on a plate on the door jamb.
- "Designed or used to transport more than 8" (or more than 15)" – WHD will determine this information based on the vehicle's current design and the vehicle capacity as found on the door jamb plate. Where a vehicle's seating capacity has been **reduced**, for example by removing seats to accommodate a wheelchair, we will count the resulting seating capacity plus add 1 for each wheelchair placement. Where a vehicle's capacity has been **increased**, for example by bolting a bench seat into a cargo area, we will not count the added capacity unless the vehicle has been recertified by DOT for that purpose.

Effective June 6, 2008, WHD enforcement staff must apply the new limited scope of the section 13(b)(1) exemption described above. Fact Sheet #19 incorporates the changes in the application of section 13(b)(1) made by TCA.

Attachment: Section 306, P.L. 110-244
TCA Chart

DRIVER, DRIVER'S HELPER, LOADER OR MECHANIC WHOSE WORK AFFECTS THE SAFE OPERATION OF MOTOR VEHICLES ON PUBLIC HIGHWAYS IN INTERSTATE OR FOREIGN COMMERCE AND PERFORMS SUCH DUTIES ON THE FOLLOWING VEHICLES:	TCA & FLSA § 13(b)(1) EXEMPT OR NONEXEMPT STATUS
A. Exclusively on a motor vehicle that weighs (GVWR) 10,001 pounds or more.	Exempt → 4-month rule applies
B. Exclusively on a motor vehicle that is (regardless of weight) <ol style="list-style-type: none"> 1. designed or used to transport more than 8 passengers (including the driver) for compensation; or 2. designed or used to transport more than 15 passengers (including the driver) and not used to transport passengers for compensation; or 3. used in transporting hazardous material, requiring placarding under regulations prescribed by the Secretary of Transportation. 	Exempt → 4-month rule applies
C. On a motor vehicle that weighs 10,001 pounds or more, as well as on a motor vehicle described in B above in the same workweek.	Exempt → 4-month rule applies
D. Exclusively on a motor vehicle that weighs 10,000 pounds or less (except motor vehicles described in B above).	Nonexempt entirely
E. On a motor vehicle that weighs 10,001 pounds or more; however, in some workweeks (whether the entire week or part of the week), also performs safety affecting duties on a motor vehicle that weighs 10,000 pounds or less (referred to as "small vehicle").	Nonexempt in those workweeks where work is also performed on a vehicle that weighs 10,000 pounds or less (small vehicle); 4-month rule may apply in other workweeks
F. On a motor vehicle that is (regardless of weight) <ol style="list-style-type: none"> 1. designed or used to transport more than 8 passengers (including the driver) for compensation; or 2. designed or used to transport more than 15 passengers (including the driver) and not used to transport passengers for compensation; or 3. used in transporting hazardous material, requiring placarding under regulations prescribed by the Secretary of Transportation. <p>However, in some workweeks (whether the entire week or part of the week), also performs safety affecting duties on a motor vehicle that weighs 10,000 pounds or less ("small vehicle").</p>	Nonexempt in those workweeks where work is also performed on a vehicle that weighs 10,000 pounds or less (small vehicle); 4-month rule may apply in other workweeks

For example:

An employer employs a pool of drivers, anyone of whom could be called upon to drive a truck weighing 10,001 pounds or more to transport materials to a construction site in another state. If a driver is called to drive the truck to the construction site, that driver along with the other drivers who could have been called upon to drive are exempt from overtime pay for the following four months, as described in **A** above.

However, if a driver in any workweek during the four months performs safety affecting duties on a vehicle that weighs 10,000 pounds or less ("small vehicle"), that driver alone is nonexempt for that workweek and must receive overtime pay for hours worked over 40, as described in **E** above.

SEC. 306. APPLICABILITY OF FAIR LABOR STANDARDS ACT REQUIREMENTS AND LIMITATION ON LIABILITY.

(a) **APPLICABILITY FOLLOWING THIS ACT.**--Beginning on the date of enactment of this Act, section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) shall apply to a covered employee notwithstanding section 13(b)(1) of that Act (29 U.S.C. 213(b)(1)).

(b) **LIABILITY LIMITATION FOLLOWING SAFETEA-LU.**--

(1) **LIMITATION ON LIABILITY.**--An employer shall not be liable for a violation of section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) with respect to a covered employee if--

(A) the violation occurred in the 1-year period beginning on August 10, 2005; and

(B) as of the date of the violation, the employer did not have actual knowledge that the employer was subject to the requirements of such section with respect to the covered employee.

(2) **ACTIONS TO RECOVER AMOUNTS PREVIOUSLY PAID.**--Nothing in paragraph (1) shall be construed to establish a cause of action for an employer to recover amounts paid before the date of enactment of this Act in settlement of, in compromise of, or pursuant to a judgment rendered regarding a claim or potential claim based on an alleged or proven violation of section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) occurring in the 1-year period referred to in paragraph (1)(A) with respect to a covered employee.

(c) **COVERED EMPLOYEE DEFINED.**--In this section, the term "covered employee" means an individual--

(1) who is employed by a motor carrier or motor private carrier (as such terms are defined by section 13102 of title 49, United States Code, as amended by section 305);

(2) whose work, in whole or in part, is defined--

(A) as that of a driver, driver's helper, loader, or mechanic; and

(B) as affecting the safety of operation of motor vehicles weighing 10,000 pounds or less in transportation on public highways in interstate or foreign commerce, except vehicles--

(i) designed or used to transport more than 8 passengers (including the driver) for compensation;

(ii) designed or used to transport more than 15 passengers (including the driver) and not used to transport passengers for compensation; or

(iii) used in transporting material found by the Secretary of Transportation to be hazardous under section 5103 of title 49, United States Code, and transported in a quantity requiring placarding under regulations prescribed by the Secretary under section 5103 of title 49, United States Code; and

(3) who performs duties on motor vehicles weighing 10,000 pounds or less.

CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Bobby Pearson, Frank Spacek, Stefan Marunde, Ky Teumboun, Brennan Andrades, Stephan Whitson, Michael Govantes, Tri Nguyen, Paul Kincade and Craig Richards, individually and on behalf of all those

(b) County of Residence of First Listed Plaintiff Tarrant

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

The Law Office of Chris R. Miltenberger, PLLC, 430 N Carroll, Suite 120, Southlake, Texas 76092, 817-296-0422, Chris R. Miltenberger

DEFENDANTS

Trinity Armored Security, Inc. and Kenneth A. West

County of Residence of First Listed Defendant Tarrant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE:

IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

4-13CV-281-Y

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):

FLSA, 29 U.S.C. §§ 206, 207, and 215(a)(2)

Brief description of cause:

Recovery of minimum wage and overtime for Plaintiffs and other similarly situated individuals

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S)

PENDING OR CLOSED:

(See instructions):

JUDGE

DOCKET NUMBER

DATE

04/08/2013

SIGNATURE OF ATTORNEY OF RECORD

Chris R. Miltenberger

Chris R. Miltenberger

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE